

No. 3 of 3 Executed
Original Counterparts

MODIFIED AGREEMENT
By and among the
FEDERAL HIGHWAY ADMINISTRATION

AND

VIRGINIA DEPARTMENT OF TRANSPORTATION

AND

POCAHONTAS PARKWAY ASSOCIATION

THIS AGREEMENT, made and entered into this 12th day of June 2006, by and among the VIRGINIA DEPARTMENT OF TRANSPORTATION, a department of the Commonwealth of Virginia (hereinafter referred to as "VDOT"), POCAHONTAS PARKWAY ASSOCIATION, a non-stock, not-for-profit corporation organized and existing under the laws of the Commonwealth of Virginia (hereinafter referred to as the "Association"), and the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "FHWA"), hereby provides as follows:

WITNESSETH:

WHEREAS, VDOT developed a toll highway pursuant to Virginia's Public-Private Transportation Act of 1995, as amended, which has been designated as the Route 895 Connector and is also known as the Pocahontas Parkway (the "Project"). The Project is located primarily in the southeastern portion of Henrico County, but also extends for a short distance into the eastern tip of Chesterfield County and includes a small portion in the City of Richmond; and

WHEREAS, pursuant to Section 129 of Title 23, United States Code, as amended, on September 29, 1999, VDOT, the Association (as the Project's operator) and FHWA entered into an agreement to permit federal participation in the initial design and construction of the Project (the "Original Agreement"); and

WHEREAS, in connection with the project financing plan, VDOT initially granted to the Association the right to charge and collect tolls on the Project, pursuant to a Comprehensive Agreement dated as of June 3, 1998 (the "Comprehensive Agreement"); and

WHEREAS, VDOT and the Association now wish to assign the Comprehensive Agreement to a new private operator as well as amend certain terms and conditions thereof (the date on which this assignment occurs is referred to herein as the "Transfer Date"); and

WHEREAS, the Association intends to wind up its business and dissolve as soon as practicable after the Transfer Date.

NOW THEREFORE, VDOT, the Association, and FHWA hereby agree as follows:

1. On the Transfer Date:

- (a) The provisions of the Original Agreement are hereby amended and restated in their entirety as set forth in this Agreement;
- (b) The Association is released from all of its obligations under the Original Agreement, and it has no further liability thereunder or hereunder; and
- (c) Should the Comprehensive Agreement be assigned to a new private operator, VDOT shall have appropriate contractual arrangements in place with the private operator ensuring compliance with this Agreement, 23 U.S.C. 129, and all other Federal laws that are requirements with respect to the Project.

2. VDOT agrees that the toll revenues from the operation of the toll facility will be used first for debt service, for a reasonable return on investment of any private person financing the project, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation, as provided in paragraph 3 of Section 129(a) of Title 23, United States Code, as amended.

3. In accordance with Section 129(a) of Title 23, United States Code, as amended, VDOT hereby certifies that it can and will comply with the following requirements provided in paragraph 3 of Section 129(a), Title 23, United States Code, as amended:

VDOT agrees to certify annually that the toll facility is being adequately maintained. Upon such certification, VDOT is entitled to use any toll revenues in excess of amounts required under paragraph 3 of Section 129(a), as amended, for any purpose for which Federal funds may be obligated by a State under Title 23, United States Code.

4. VDOT agrees, upon reasonable notice, to make all the records pertaining to the toll facility subject to audit by FHWA. VDOT agrees to annually audit the records of the toll facility for compliance with the provisions of this Agreement and report the results thereof to FHWA. In lieu of VDOT performing said audit, a report of an independent auditor furnished to FHWA and VDOT may satisfy the requirements of this section.

5. Should the Comprehensive Agreement be assigned to a new private operator on the Transfer Date, VDOT will be responsible for the private operator's compliance with all applicable Federal requirements as provided in paragraph 2 of Section 129(a) of Title 23, United States Code, as amended.

6. This Agreement will be prepared in triplicate originals so that each signatory will have an original hereof.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION

BY: Gregory A. Whirley
Gregory A. Whirley
Commonwealth Transportation Commissioner

POCAHONTAS PARKWAY ASSOCIATION

BY: James W. Atwell
James W. Atwell
President

FEDERAL HIGHWAY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION

BY: Tommy Hestley
for King W. Gee
Associate Administrator for Infrastructure